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OFFICE OF PETITIONS

DAC/1642  
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01997.020000.4

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	:	Examiner: Karen A. Canella, Ph.D.
SEISHI KATO, ET AL.	)	
	:	Group Art Unit: 1642
Application No.: 09/485,951	)	
	:	
Filed: February 17, 2000	)	
	:	
For: HUMAN GELECTIN-9-LIKE	)	
PROTEINS AND cDNAs	:	
ENCODING THESE PROTEINS	)	August 1, 2003

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.137(b)

Sir:

Applicants hereby petition the Commissioner under 37 C.F.R. § 1.137(b) to restore to pending status the above-identified application, which has become unintentionally abandoned for failure to timely file a proper reply to the earlier Office Action (Paper No. 17) dated December 3, 2002.

In accordance with 37 C.F.R. §1.137(b)(2), enclosed is a check in the amount of \$1280.00 for payment of the fee required under 37 C.F.R. § 1.17(m) in connection with the petition. Please charge any additional fees due to Deposit Account No. 06-1205.

08/05/2003 CNGUYEN 00000094 061205 09485951  
01 FC:1453 20.00 DA 1280.00 OP

### RESPONSE TO OFFICE ACTION

In accordance with 37 C.F.R. § 1.137(b)(1), attached hereto at Tab A is a Petition for Extension of Time and a check in the amount of \$930.00 to cover the extension fee.

In conformity with 37 C.F.R. §137(c), Applicants' Response is the accompanying continuing application together with a Preliminary Amendment, an Information Disclosure Statement, a Statement Concerning Sequence Listing and a check in the amount of \$1030.00 to cover the filing fee.


Pursuant to 37 C.F.R. § 1.137(b)(3), the undersigned hereby certifies that the entire delay in filing the required reply from the due date of the reply until the filing of this grantable petition was unintentional.

### RELIEF REQUESTED

In view of the foregoing, the Commissioner is respectfully requested to return the above-identified application to pending status.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Applicants  
Lawrence S. Perry  
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

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UNITED STATES  
PATENT AND  
TRADEMARK OFFICE

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AUG 06 2003

OFFICE OF PETITIONS

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PO BOX 1450, ALEXANDRIA, VA 22313-1450  
WWW.USPTO.GOV

JUL 2 2003

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK NY 10112

In re Application of  
Yutaka Takano et al  
Serial No.: 09/496,041  
Filed: February 2, 2000  
Attorney Docket No.:

02439. 000017  
LSI  
9/2/03  
7/16/03 mpu (Ac)  
: WITHDRAWAL OF ABANDONMENT

This is in response to the petition under 37 CFR 1.181, filed April 24, 2003, requesting withdrawal of the holding of abandonment of the above identified application.

A review of the file history shows that the Office mailed a non-Final Office action to applicants on August 13, 2002, setting a three month shortened statutory period for reply. This was a first Office action following the filing of a CPA request which was granted. Applicants replied on February 13, 2003, by filing a request for a three month extension of time, a Request for Continued Examination (RCE) and a request for suspension of action and the fees for all of the requests.

37 CFR 1.114 states as follows:

- (a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
- (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
  - (2) Abandonment of the application; or
  - (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.
- (b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

As noted above the filing an RCE is permitted only when prosecution in an application is closed and the application has a filing date later than May 29, 2000. The earlier filed CPA established the filing date on which an RCE may be based. However, the RCE filing was improper as the application prosecution was not closed. Since the filing occurred on the last day of the six month statutory period for filing a reply to an Office action and no reply to the Office action accompanied the RCE papers, the application was held abandoned. The request for a three month suspension of prosecution could not be granted as (a) the RCE was not grantable and (b) a suspension of action cannot be granted when applicant is under an obligation to reply to an

outstanding Office action. Thus the application was properly held abandoned. Applicants are entitled to a refund of the fees paid in error for the RCE and suspension of action.

Applicants' attachments to the petition requesting the filing of a continuing application will not be acted on. Such requests should be filed separately to "Mail Stop: New Application". Further, in order to establish copendency between this application and any continuing application a petition under 37 CFR 1.137(b) must be filed in this application for that purpose.

Applicants' petition is **DENIED**.

**Alternatively, applicant may revive this application only by filing a petition under 37 CFR 1.137(b). Any such renewed petition must be filed within TWO MONTHS of the mailing date of this decision and must be accompanied by a reply to the outstanding Office action.**

**The fee paid for filing RCE papers of \$750.00 and for suspension of action of \$130.00 will be credited to applicants' Deposit Account No. 06-1205, as directed. (The fee for the extension of time is not refundable as it was not paid in error.)**

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.



Bruce M. Kisliuk

Director, Technology Center 1600